

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CARVIS LAMAR JOHNSON

PLAINTIFF

V.

CIVIL ACTION NO. 3:21-CV-88-KHJ-MTP

CARRIE WILLIAMS et al.

DEFENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge Michael T. Parker. [26]. That Report recommends that the Court deny Defendant Alexia Sanders's Motion to Dismiss [23] without prejudice. Written objections to the Report were due by January 25, 2022. The Report notified the parties that failure to file written objections to the findings and recommendations by that date would bar further appeal in accordance with 28 U.S.C. § 636.

Sanders did not file objections. When no party has objected to a magistrate judge's report and recommendation, the Court need not review it de novo. 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Plaintiff Carvis Johnson brings this § 1983 action, in part, against prison nurse Alexia Sanders, alleging Sanders paid an inmate in drugs to "be[at] [Johnson]

up.” Compl. [1] at 5. Sanders moved to dismiss the case because Johnson checked a box on his standardized pro se prisoner complaint form indicating he was suing Defendant “Nurse Sanders” in her official capacity, *id.* at 2, and a suit for damages cannot lie against an officer in her official capacity, [23]. Magistrate Judge Parker found that the facts in Johnson’s complaint support a failure to protect claim under *Farmer v. Brennan* and the Eighth Amendment of the United States Constitution against Sanders in her individual capacity. 511 U.S. 825 (1994). Because pro se litigants’ complaints are to be liberally construed and Johnson requested a *Spears* hearing where Johnson can clarify and amend his allegations, the Magistrate Judge recommended denying the motion without prejudice. [26] at 2. The Court finds that the Report and Recommendation is neither clearly erroneous nor contrary to law and should be adopted as the opinion of this Court. The Court liberally construes the complaint against Sanders in her individual capacity.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and Recommendation [26] of United States Magistrate Michael T. Parker, entered in this cause should be, and the same is, adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that Defendant Sander’s Motion to Dismiss [23] is denied without prejudice.

SO ORDERED, this the 27th day of January, 2022.

s/ Kristi H. Johnson
UNITED STATES DISTRICT JUDGE